

Appeal by the plaintiffs from the judgment of ROSE, J., 17 O.W.N. 230.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, J.J.A.

W. N. Tilley, K.C., and R. H. Parmenter, for the appellants.

R. S. Robertson and G. H. Sedgewick, for the defendants, respondents.

FERGUSON, J.A., reading the judgment of the Court, said that the plaintiffs and defendants were mining companies, owning adjoining properties in the township of Coleman, and the dispute between them was in reference to the ownership and possession of a strip of land, containing about 3.8 acres, situated on or between the plaintiffs' western and the defendants' eastern boundaries. The plaintiffs' property, referred to as R.L. 403, was described in the Crown grant by a survey and plan made and prepared by Robert Laird, P.L.S. The defendants' property, the "Violet" claim, was described in the Crown grant by reference to a survey and plan made by James H. Smith, P.L.S. Both parties claimed title to the Laird line; each endeavoured to establish the Laird line; but the learned trial Judge, after a very careful review of the evidence, came to the conclusion that there was not before him sufficient to enable him to find the Laird line, and dismissed the plaintiffs' claim for a declaration of title, trespass, damages, and an injunction.

The trial Judge was right in refusing to find that the Laird line had been established and in not finding that the paper-title to the strip of land in dispute was in one or other of the parties, or partly in one and partly in the other, or had been granted by the Crown.

But it did not follow that the plaintiffs were not entitled to any relief. There was ample evidence that the plaintiffs entered upon the mining location R.L. 403 intending to take and hold possession of the whole property as it appeared to them to be plotted on the ground and in the belief that the eastern boundary was laid out and plotted upon the ground by the "Earl," the "Shaw," "Colonial No. 4," and the "Blair" posts, in the 6th concession of Coleman, and that such possession was at all times claimed and maintained as of right and without dispute or adverse claim down to May, 1918, when the defendants entered and planted an iron post 59.2 feet west of "Colonial No. 4," and by letter of the 29th May, 1918, notified the plaintiffs that they had caused the post to be planted as an assertion that it marked the true boundary.